

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

EDUARDO VIZCAYNO,

Plaintiff,

V.

RHONDA BURTON, et al.,

Defendants.

Case No. 6:20-cv-465-JDK-KNM

**ORDER ADOPTING THE REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Eduardo Vizcayno, a Texas Department of Criminal Justice inmate proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for disposition.


On April 30, 2021, Judge Mitchell issued a Report recommending that Plaintiff's civil rights action be dismissed without prejudice for failure to prosecute and failure to comply with a Court order. Docket No. 16. Specifically, Plaintiff failed to pay the statutory filing fee or to furnish a properly certified inmate trust account sheet or *in forma pauperis* data sheet. See Docket Nos. 6, 13. While Plaintiff has applied for leave to proceed *in forma pauperis*, he has not furnished a certified data sheet despite multiple requests to do so. A copy of Judge Mitchell's Report was sent to Plaintiff. To date, Plaintiff has neither objected to the Report nor otherwise communicated with the Court.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 16) as the findings of this Court. It is therefore **ORDERED** that this case is **DISMISSED** without prejudice for want of prosecution and Plaintiff’s failure to comply with a Court order. It is further **ORDERED** that in order to prevent this dismissal from acting as a dismissal with prejudice by reason of limitations, the statute of limitations is **SUSPENDED** for a period of ninety days following the date of entry of final judgment.

So **ORDERED** and **SIGNED** this **28th** day of **July, 2021**.

  
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JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE